

LOUISIANA STATE BOARD OF MEDICAL EXAMINERS
October 14, 15, 2019
AGENDA

CALL TO ORDER

Business Meeting, Monday, October 14, 2019, 8:30 a.m., 630 Camp Street, New Orleans, 5th Floor.

Public Administrative Hearing, Rules, Act 454 Notice, Monday, October 14, 2019, 9:00 a.m.

Ragan LeBlanc, Executive Vice President, Louisiana Academy of Family Physicians, Richard Bridges, M.D., Rep. Jeremy Lacombe and Jeff Williams, Executive Vice-President & CEO, Louisiana State Medical Society, Personal Appearance, Monday, October 14, 2019, 10:00 a.m., IMG Licensure and Moonlighting.

Jim Smith, M.D., Chief Science Officer and Wallace Luke, Chief Executive Officer, MyCannalog, Personal Appearance, Monday, October 14, 2019, 10:30 a.m.

Personal Appearances, Monday, October 14, 2019, 1:00 p.m.

Robert L. Marier, M.D., MHA, Chairman, Department of Hospital Medicine, Ochsner Health System, Personal Appearance, Monday, October 14, 2019, 2:00 p.m.

Formal Administrative Hearing, Monday, October 14, 2019, 3:30 p.m.

1. PUBLIC/VISITORS INTRODUCTION/COMMENTS

2. MINUTES/PRIOR MEETINGS/CONFERENCES

Approval of minutes of last month's meetings.

Status report on action items of prior Board meetings.

Report on assignments to counsel.

Hospitalist Program; Collaborating Physicians/NPs; Draft Response.

Telemedicine; Prescribing of Controlled Substance; Draft Response.

Prescribing of Opioid Drugs in accordance with Act 426; Draft Response.

PA Engaging SP as Independent Contractor; Draft Response.

3. RULINGS AND ADVISORY OPINIONS

Performance of intraocular injections by APRN's or PAs.

Treatment of hypertension by optometrists.

Low-dose Ketamine infusions; licensure requirements.

Telemedicine services provided by advance practice providers.

4. ADMINISTRATIVE MATTERS

President's Report.

Executive Director's Report.

Clinical Laboratory Personnel Committee Nominee.

Palliative Care Interdisciplinary Advisory Council; List of Nominees.

Medicaid Pharmaceutical and Therapeutics Committee; List of Nominees.

MyCannalog.

Guidance for Non-complete Agreements; LSMS.

Draft *Newsletter*.

Financial Matters.

5. RULES AND REGULATIONS

a. Rules/Amendments: Rules Adopted: None last meeting of the Board.

b. Rules/Amendments: Noticed for Intent to Adopt: Therapeutic Marijuana:

Pursuant to the Board's request, a rulemaking effort has been commenced to accommodate several changes in the law resulting from Acts 496 (HB 627, Rep. Lyons) and 708 (HB 579, Rep. James) of the 2018 Regular Session of the Legislature. In conformity with the law, the proposed changes: (i) add various conditions to the definition of a *debilitating medical condition*, for which therapeutic marijuana may be recommended by a physician; and (ii) clarifies two provisions in conformity with the Board's prior advice (e.g., 7705A.5, 7714A.4). The draft also highlights several provisions that were the subject of a request for rule-making, which the Board denied/deferred pending the conclusion of the 2018 legislative session. During the

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September 2018 meeting, the Board reviewed the proposed amendments and gave consideration to the items noted in a request for rulemaking. Following discussion and comment from numerous members of the public, the Board voted to adopt a number of proposed amendments including (i) to include post-traumatic stress disorder and chronic intractable pain as debilitating medical conditions, given their addition to the law by Act 709 of the 2018 Regular Session of the Legislature (7705A); (ii) eliminate the 100 patient limit (impose no limit) on the number of patients for whom a physician registered with the Board may recommend therapeutic marijuana(7701A.2, 7709B); (iii) remove the requirement that the physician re-examine the patient at intervals not to exceed 90 days and instead leave the frequency of follow-up examinations to the judgement of the treating physician (7717A.6); adopt other changes made necessary for conformity with the law and consistency with prior Board advice. Given that requirements of the law which defines a recommendation for therapeutic marijuana to be an "order from a physician...authorized by the Board to recommend medical marijuana that is patient-specific and disease-specific", the Board did not modify the rule requirements relative to form, amount, dosage and instruction for use. (7721A.4; 7729D). In addition, the Board suggested additional amendments to the rules for conditions associated with autism spectrum disorder (Act 496 of the 2018 Regular Session) for review during the October 2018 meeting. A draft incorporating those changes along with draft wording to address the additional changes were presented for review and consideration at the October 2018 meeting. Following review and discussion, the Board voted to defer providing *Notice of Intent* to adopt the amendments until it had further opportunity to consider and explore the amendment to certain new definitions made necessary by Act 496. Upon further consideration and discussion at its December 2018 meeting, the Board voted to: (i) revise the definitions for "consult or consultation" and "pediatric subspecialist;" (ii) in response to a request for clarification by the Louisiana Hospital Association, amend the definition of "Bona-Fide Physician-Patient Relationship" (77075A) to eliminate unintended consequences of in-person examinations conducted at locations other than a physician's physical practice location, which are contained in the physician's registration with the Board; and (iii) provide *Notice of Intent* to adopt all of the proposed amendments in the *Louisiana Register*. The proposed amendments were submitted to the OLRC for approval. The *Notice of Intent* was published in the April 2019 edition of the *Louisiana Register*. A request for a public hearing was submitted to the Board, *albeit* untimely, by a professional association concerning the proposed definition of "pediatric subspecialty". The submission was considered and accepted by staff as a written comment and the commenter was advised that it would be considered at Board's June 2019 meeting, at which time the commenter's oral comments was accepted. Following review and discussion during its June 2019 meeting, the Board approved submission of the required reports to the OLRC and Legislative Oversight Committees and, provided that no changes are recommended, promulgation of the amendments upon publication in the *Louisiana Register*. On July 3, 2019, a report was submitted to the OLRC for consideration at the Commission's next meeting. The OLRC scheduled a meeting for August 22, 2019 and that meeting was rescheduled to August 29, 2019. Because there were no changes made since the publication of the NOI, the Commissioner advised that a second review by the OLRC was not necessary. On August 28, 2019, the final report was submitted to the Legislature. Provided an oversight hearing is not called, it is anticipated that the final rule amendments will be promulgated by and upon publication in the October 20th edition of the *Louisiana Register*. **Physicians; Fellowship Training Permit:** Pursuant to the Board's request, a rulemaking effort has been undertaken to amend its rules to provide for a short-term training permit that would

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accommodate fellowship training that is not accredited by the ACGME, that is offered by a Louisiana medical school or major teaching hospital with an underlying ACGME accredited residency training program in the same specialty as the fellowship. A draft was prepared and presented that Board at the October 2018 meeting for initial review and discussion. Following review and discussion, at its October and December 2018 meetings, the Board voted to provide a preview draft to various stakeholders prior to providing *Notice of Intent* to adopt the amendments in the *Louisiana Register*. After the report on information received from the various stakeholders, the Board voted to provide a *Notice of Intent* to adopt the rules and to submit to the OLRC for approval. The OLRC approved the proposed amendments. The *Notice of Intent* was published in the April 2019 edition of the *Louisiana Register*. Neither a request for a public hearing or written comment was received during the comment period. Following review and discussion during its June 2019 meeting, the Board approved submission of the required reports to the OLRC and Legislative Oversight Committees and, provided that no changes are recommended, promulgation of the amendments upon publication in the *Louisiana Register*. On July 2, 2019, a report was submitted to the OLRC for consideration at the Commission's next meeting. The OLRC scheduled a meeting for August 22, 2019 and that meeting was rescheduled to August 29, 2019. Because there were no changes made since the publication of the NOI, the Commissioner advised that a second review by the OLRC was not necessary. On August 28, 2019, the final report was submitted to the Legislature. Provided an oversight hearing is not called, it is anticipated that the final rule amendments will be promulgated by and upon publication in the October 20th edition of the *Louisiana Register*.

c. **Rules/Amendments under Development:** The following rules are under consideration by the Board. **Physicians Compounding Medication:** At its December 2014 and January 2015 meetings, the Board reviewed Emergency Rules adopted by the Louisiana State Board of Pharmacy to reflect certain changes in federal law concerning compounded medication. Following review and discussion, the Board elected to undertake a rulemaking effort as to physicians who compound medication in order to insure consistency with federal and state law and regulations. A draft will be presented for initial review and consideration in due course. **Physician Advertising:** **Board Certification:** At its March 2015 meeting, the Board determined to undertake a rulemaking effort to establish a process for its approval of certifying boards, alternative to the ABMS and AOA, for purposes of physician advertising of *Board Certification*. The Board directed that a draft be prepared and presented for review and approval. In conformity with the Board's direction, a draft was presented for initial review and discussion at its April 2015 meeting. Following further discussion at its May 2015 meeting, the Board voted to provide *Notice of Intent* to adopt the amendments. An additional wording change was discussed at the September 2015 meeting and pre-notice input was received from interest parties at that time. Following review and discussion, the Board elected to defer action on this matter for at least another month to allow further consideration and input by other stakeholders. The additional information requested from interested stakeholders by the Board on certification, training and accreditation has not been received. In line with the Board's direction at its March 2016 meeting, a letter was sent to interested stakeholders requesting that they submit any additional information they may want to be considered in time for the May 2016 agenda. During its May 2016 meeting, the Board received the input of interested parties present who wished to speak on the agenda item. It also gave initial consideration to the voluminous materials submitted by various organizations and individuals. Following discussion the Board elected to defer action on the rule-making effort pending further review of the information submitted and the receipt of additional

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information. To that end, it also elected to designate a special committee comprised of individuals recommended by the Deans of the state's medical schools and a former Board member to provide information on the processes involved in the accreditation of physician post-graduate training. During its January 2017 meeting, the Board received the Report of the Ad Hoc Committee. Following discussion, the Board requested certain changes to the draft previously appearing on its agenda, along with additional information for its consideration. Per the Board's directions, attached are two (2) drafts amending the draft that was previously in the 2015 agenda: Draft one ((Exh. 2A) limits board approval to certifying organizations that require passage of a psychometric exam and complete ACGME training in the specialty/subspecialty; Draft two (2B) limits board approval to certifying organizations that require passage of a psychometric exam *plus* completion of ACGME/AOA training of comprehensive scope that is substantially equivalent to training required for ABMS/AOA certification in the specialty or subspecialty or for training other than ACGME, training of comprehensive scope that is substantially equivalent to that of an ACGME accredited program in the specialty or subspecialty. During its March 2017 meeting, the Board considered and discussed the two drafts of the proposed rule and received input from interested parties present. Following further discussion and consideration at its April 2017 meeting, the Board approved Draft 2A and voted to provide *Notice of Intent* to adopt the amendments in the *Louisiana Register*. During the March 2018 meeting, the Board determined to defer moving forward to the next step of the rulemaking process until it has had an opportunity to further explore and consider all other available options, as well as the outcome of a bill introduced in this session of the Louisiana Legislature that would remove its jurisdiction to act in this matter. **Physicians; Licensure:** Amendments to the physician licensure rules as suggested by staff was presented for initial review and discussion to update generally for consistency with current standards and make other substantive and technical modifications made necessary by the passage of time and current practices. Following review and discussion at its January 2018 meeting, the Board suggested proceeding slowly with the proposed changes in order to fully consider how such changes may affect other sections of the rules. In the interim, the Board approved moving forward with the suggested amendment to §417B to clarify that a renewal reminder would be mailed to licensees in lieu of an actual application. **Physicians; Complaints and Investigations:** Pursuant to the Board's request, a rulemaking effort commenced to conform its rules on complaints and investigations to various changes in the law resulting from Act 599 (HB 778, Rep. K. Jackson) of the 2018 Regular Session of the Legislature. A draft was developed and reviewed by staff. It was presented for initial review and discussion at the October meeting of the Board. Following review and discussion, the Board voted to provide a preview draft to various stakeholders prior to providing *Notice of Intent* to adopt the amendments. At the December 2018 meeting, the Executive Director reported no negative feedback from the preview draft. Upon further consideration and discussion, the Board voted to provide *Notice of Intent* to adopt the amendments in the *Louisiana Register*. At the request of the President, that the rule effort was delayed until the March 2019 meeting to provide the Board an opportunity to consider a new rule on the assessment of fees in administrative disciplinary proceedings, the draft of which was included. Given that there is no need for further discussion on the original rule effort, the Board may wish to consider moving forward with this rulemaking effort and allowing additional time to further consider the assessment of fees. During its June 2019 meeting, the Board elected to provide *Notice of Intent* to adopt the originally proposed amendments in the *Louisiana Register* and give further consideration to the rule on assessment of costs. The proposed changes are being transmitted to the OLRC for the next Commission meeting. **Physician Practice:**

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Therapeutic Marijuana: Act 284 (2019 Regular Session), amended state law governing medical marijuana in a manner that impacts the Board's existing rules in several respects e.g., removes the (i) requirement for annual reporting by the Board to the legislature as to any additional diseases or conditions that should be added or removed from the list of debilitating conditions; (ii) requirement that a physician utilize *step therapy or fail first* protocols; and (iii) physician domiciliary requirement for a physician to recommend marijuana. At the August 2019 meeting, the Board voted to provide *Notice of Intent* to adopt the amendment in the *Louisiana Register*. The proposed changes are being transmitted to the OLRC for the next meeting of the Commission.

d. **Potpourri Notice/Petitions for Rulemaking (Act 454 Notice):** Pursuant to Act No. 454 of the 2018 Regular Session of the Louisiana Legislature, codified as La. R.S. 49:953(C)(2), at least once prior to January 1, 2020, and at least once during every six-year period thereafter, each agency which engages in rulemaking is required to conduct a public hearing for the purpose of allowing any interested person the opportunity to comment on any rule of the agency which the person believes is contrary to law, outdated, unnecessary, overly complex, or burdensome. The agency is required to publish notice of the meeting in the *Louisiana Register*, give notice electronically to the appropriate legislative oversight committees, and provide notice to all persons who have made timely request of the agency for notice of rule changes, no later than thirty days prior to the meeting. As with all efforts, the agency is required to consider the comments and issue a response to each submission, consideration, and disposition. During its June 2019, meeting, the Board approved the *Potpourri* Notice for publication in the *Louisiana Register*, July 20, 2019 edition. Legislative notice has been provided. The hearing is scheduled for October 14, 2019 at 9:00 a.m. Agencies are also required to prescribe by rule the form for petitions for adoption, amendment, or repeal of a rule and the procedure for their submission, consideration, and disposition. A draft rule to address such petitions was provided for initial Board member review and discussion during its June 2019 meeting, at which time the Board approved the *Potpourri* Notice for publication in the *Louisiana Register's* July 20, 2019 edition. Legislative notice has also been provided. The hearing is scheduled for this month's meeting at 9:00 a.m.

6. PUBLIC COMMENTS

EXECUTIVE SESSION

1. GENERAL ADMINISTRATIVE MATTERS

Board Effects; Proprietary Information.

2. MINUTES/PRIOR MEETINGS

Executive Session Minutes Approval.

3. MALPRACTICE COMMITTEE REPORT

Professional liability reports.

4. REPORTS INVESTIGATIONS/ADJUDICATIONS/LITIGATION

Interim Actions.

Recommendation to Commence Investigations.

Recommendation to Extend Preliminary Review.

Other Investigative Matters.

5. LITIGATION

Reports on pending appeals/suits/petitions.

6. GENERAL DISCIPLINARY MATTERS

Requests for reinstatement of license to full, unrestricted status, off probation.

Request for modification of the terms of a Board Order.

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- Request for clarification regarding monitoring.
Office-Based Surgery Compliance.
- 7. LICENSURE AND CERTIFICATION**
Graduates of International/Foreign Medical Schools
Requests for waiver of licensure requirements.
Other Licensure Matters
CME Audit; Follow-up.
- 8. GENERAL ADMINISTRATIVE MATTERS**
LLA Performance Audit; Follow-up.
Personnel Matters.
- 9. NEXT MEETING**
Next meeting of the Board – December 9, 10, 2019.